

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

8 SABIR AL-MANSUR,  
9 Plaintiff,  
10 vs.  
11 BARRY GROSS, individually, GROSS  
12 MORTGAGE CORPORATION,  
13 CONTRACTORS CAPITAL  
14 CORPORATION, and DOES 1 through 200  
inclusive,  
Defendants.

Case No: C 12-5535 SBA  
**ORDER**  
Docket 12

16 The parties are presently before the Court on pro se Plaintiff Sabir Al-Mansur's  
17 ("Plaintiff") motion to recuse or disqualify the undersigned under 28 U.S.C §§ 144 and  
18 455(a). Dkt. 12. No Defendant has filed a response to the motion. Having read and  
19 considered the papers filed in connection with this matter and being fully informed, the  
20 Court hereby DENIES Plaintiff's motion, and DISMISSES this action for lack of subject  
21 matter jurisdiction, for the reasons stated below. The Court, in its discretion, finds this  
22 matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal.  
Civ. L.R. 7-1(b).

## I. BACKGROUND

The instant action arises out of unlawful detainer actions filed against Plaintiff in the Alameda County Superior Court concerning real property located at 2421 Market St., Oakland, CA 94607 (the "Property"). See Compl., Dkt. 1. On October 31, 2012, Plaintiff filed a first amended complaint ("FAC") against Defendants Barry Gross, Gross Mortgage

1 Corporation, and Contractor Capital Corporation (collectively, "Defendants") alleging one  
 2 claim for declaratory relief. Dkt. 10.

3 The FAC alleges that Defendants have filed several "Unlawful Detainer Claims"  
 4 against Plaintiff "misapplying Cal. Code of Civ. Procedure 1161(a)." FAC at 6. By this  
 5 action, Plaintiff seeks: (1) "an affirmative determination" that Defendants "misapplied" Cal.  
 6 Code Civ. Proc. §§ 1161 and 1161(a) "to pursue their Unlawful Detainer action  
 7 incorrectly"; (2) "an affirmative determination that [he] is a homeowner and not a tenant";  
 8 (3) an order vacating "all orders, judgments, rulings, writs, and determinations in all  
 9 Unlawful Detainer complaints filed by Defendants, Gross Mortgage against [him] . . .  
 10 pursuant to 1161(a) in the following Case Numbers: RG11602224 and RG11610380, with  
 11 prejudice"; (4) an injunction preventing Defendants from initiating "further Unlawful  
 12 Detainer actions against the subject property owned by [him]"; and (5) an order  
 13 "[n]otify[ing] the Alameda County Superior Court and the Alameda County Sheriff['s]  
 14 Department to immediately dismiss Case Numbers RG11602224 and RG11610380 and  
 15 Sheriff Writ Number 20120099649, with prejudice." Id. at 7.

16 **II. DISCUSSION**

17 **A. Motion to Recuse or Disqualify**

18 Plaintiff contends that recusal or disqualification of the undersigned from presiding  
 19 over the instant action is appropriate for four reasons. First, Plaintiff argues that the  
 20 undersigned has a personal bias or prejudice against him because the undersigned issued an  
 21 order<sup>1</sup> remanding an unlawful detainer action (C 12-4681-SBA) improperly removed to this  
 22 Court by him. See Pl.'s Mtn. at 4; Pl.'s Aff. ¶ 18. Second, Plaintiff argues that the  
 23 undersigned has a personal bias or prejudice against him (or at the very least a conflict of  
 24 interest) because of the undersigned's previous service as an Alameda County Superior  
 25 Court judge, and because of the undersigned's "affiliation" with judges of that court. See  
 26 Pl.'s Mtn. at 4-5, 9-10, 15-16; Pl.'s Aff. ¶ 13. Third, Plaintiff argues that the undersigned

27  
 28 <sup>1</sup> See Gross Mortg. Corp. v. Al-Mansur, 2012 WL 5270052 (N.D. Cal. 2012)  
 (Armstrong, J.)

1 has a personal bias or prejudice against him or in favor of the Defendants because the  
 2 undersigned personally benefits by ruling in favor of unlawful detainer plaintiffs, banks,  
 3 and other financial institutions that are investors in CalPERS. See Pl.'s Mtn. at 11-12; Pl.'s  
 4 Aff. ¶ 19. Fourth, Plaintiff argues that recusal or disqualification is appropriate because the  
 5 undersigned's handling of the prior unlawful detainer action "flagrantly violated Canons 1-3  
 6 of the Federal Code of Judicial Conduct." See Pl.'s Mtn. at 17-19.

7 **1. Legal Standards**

8 A party may move to recuse a judge from presiding over a case pursuant to 28  
 9 U.S.C. § 144 and/or 28 U.S.C. § 455. Section 144 provides for recusal where a party files a  
 10 "timely and sufficient affidavit" averring that the judge before whom the case is pending  
 11 "has a personal bias or prejudice" either against the party or in favor of any adverse party.  
 12 28 U.S.C. § 144. The affidavit must state the facts and reasons for such belief and "shall be  
 13 accompanied by a certificate of counsel of record stating that it is made in good faith." Id.

14 A judge finding a § 144 motion timely and the affidavit legally sufficient must  
 15 proceed no further and another judge must be assigned to hear the matter. 28 U.S.C. § 144;  
 16 United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Where the affidavit is not legally  
 17 sufficient, however, the judge at whom the motion is directed may determine the matter.  
 18 See United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999). If the judge finds that the  
 19 affidavit is legally insufficient, recusal is simply denied. See United States v. \$292,888.04  
 20 in U.S. Currency, 54 F.3d 564, 566 (9th Cir. 1995).

21 "An affidavit filed pursuant to [§ 144] is not legally sufficient unless it specifically  
 22 alleges facts that fairly support the contention that the judge exhibits bias or prejudice  
 23 directed toward a party that stems from an extrajudicial source." Sibla, 624 F.2d at 868  
 24 (affidavit inadequate when based on conclusions and devoid of specific factual allegations  
 25 tending to show personal bias stemming from an extrajudicial source). "Under § 144, the  
 26 affidavits filed in support of recusal are strictly construed against the affiant and there is a  
 27 substantial burden on the moving party to demonstrate that the judge is not impartial."  
 28 United States v. Burger, 964 F.2d 1065, 1070 (10th Cir. 1992).

1 By contrast, § 455 provides broader grounds for disqualification, requiring a judge to  
 2 disqualify herself in any proceeding in which her "impartiality might reasonably be  
 3 questioned." 28 U.S.C. § 455(a). Section 455 further provides that the judge shall  
 4 disqualify herself where the judge "has a personal bias or prejudice concerning a party." 28  
 5 U.S.C. § 455(b)(1). The decision regarding disqualification under § 455 is made by the  
 6 judge whose impartiality is at issue. In re Bernard, 31 F.3d 842, 843 (9th Cir. 1994). In  
 7 analyzing § 455(a) disqualification motions, the question is "whether a reasonable person  
 8 perceives a significant risk that the judge will resolve the case on a basis other than the  
 9 merits." Clemens v. U.S. Dist. Court for Cent. Dist. of Cal., 428 F.3d 1175, 1178 (9th Cir.  
 10 2005).

11 The substantive standard used to review motions for recusal under § 144 and § 455  
 12 is the same where the party does not allege grounds for recusal other than those relating to  
 13 bias or prejudice. See Sibla, 624 F.2d at 867; Pesnell v. Arsenault, 543 F.3d 1038, 1043  
 14 (9th Cir. 2008). The standard is whether a reasonable person with knowledge of all the  
 15 facts would conclude that the judge's impartiality might reasonably be questioned. Pesnell,  
 16 543 F.3d at 1043.

17 **2. Recusal Under 28 U.S.C. § 144**

18 Recusal is warranted under § 144 where a party files a "timely and sufficient  
 19 affidavit" averring that the judge before whom the case is pending "has a personal bias or  
 20 prejudice" either against the party or in favor of any adverse party. 28 U.S.C. § 144. The  
 21 affidavit must state the facts and reasons for such belief and "shall be accompanied by a  
 22 certificate of counsel of record stating that it is made in good faith." Id.

23 Here, Plaintiff's motion is accompanied by an affidavit and a document titled  
 24 "Attorney's Certificate of Good Faith," which states that "as counsel of record" Plaintiff  
 25 certifies that his "Motion to Recuse and Affidavit in support thereof are both submitted in  
 26 good faith." Dkt. 12. While some courts have concluded that an individual proceeding pro  
 27 se cannot proceed under § 144 because he cannot submit a certificate of counsel, and other  
 28 courts have ruled that the affidavit of any counsel who is a member of the bar may sign the

1 certificate of good faith, see Jimena v. UBS AG Bank, 2010 WL 2650714, at \*3 (E.D. Cal.  
 2 2010) (citing cases), the Court finds it unnecessary to determine whether these cases have  
 3 properly interpreted the statute. Even assuming for the sake of argument that Plaintiff has  
 4 complied with the procedural requirements of § 144, Plaintiff's affidavit is substantively  
 5 insufficient. Below, the Court addresses the grounds for recusal offered by Plaintiff.

6 First, Plaintiff alleges bias and prejudice stemming from a judicial action taken by  
 7 the undersigned; namely, the issuance of an order remanding an unlawful detainer action  
 8 improperly removed to this Court by Plaintiff. See Gross Mortg. Corp. v. Al-Mansur, 2012  
 9 WL 5270052 (N.D. Cal. 2012) (Armstrong, J.). However, "judicial rulings alone almost  
 10 never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510  
 11 U.S. 540, 555 (1994); see also Leslie v. Grupo ICA, 198 F.3d 1152, 1160 (9th Cir. 1999)  
 12 (allegations of bias or prejudice that stem entirely from a judge's adverse rulings are not an  
 13 adequate basis for recusal); Sibla, 624 F.2d at 867 (holding that "[a]n affidavit filed  
 14 pursuant to [§ 144] is not legally sufficient unless it specifically alleges facts that fairly  
 15 support the contention that the judge exhibits bias or prejudice directed toward a party that  
 16 stems from an extrajudicial source"). Plaintiff has not alleged any facts demonstrating that  
 17 a reasonable person with knowledge of all the facts would conclude that the undersigned's  
 18 impartiality might reasonably be questioned based on the Court's remand order.

19 Second, Plaintiff has not shown that the undersigned's previous service as an  
 20 Alameda County Superior Court judge or her "affiliation" with judges of that court is a  
 21 proper basis for recusal. In this regard, Plaintiff alleges that the undersigned's "affiliation"  
 22 with the judges of the Alameda County Superior Court,<sup>2</sup> and conduct in "formerly presiding  
 23 over Unlawful Detainer proceedings in that Court . . . gives more than an appearance of  
 24

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25 <sup>2</sup> Plaintiff asserts that the undersigned's "affiliation" with Alameda County Superior  
 26 Court Judge Wynne Carville gives the appearance of bias because he was one of the  
 27 Plaintiff's in Gross Mortg. Corp. v. Al-Mansur, 2012 WL 5270052 (N.D. Cal. 2012)  
 28 (Armstrong, J.) Pl.'s Mtn. at 2-3. A review of the record in that case reveals that Plaintiff  
 filed a cross-complaint against Judge Wynne Carville. See C 12-4681-SBA, Dkt. 3. Thus,  
 Judge Wynne Carville was a cross-defendant, not a Plaintiff. Id. Plaintiff has not  
 demonstrated that the undersigned knows or is "affiliated" with Judge Wynne Carville.

1 bias." Pl.'s Mtn. at 16. However, the mere fact that the undersigned served as a judge for  
 2 the Alameda County Superior Court more than 20 years ago does not establish bias against  
 3 Plaintiff. Plaintiff's vague and conclusory allegations regarding the undersigned's service  
 4 as an Alameda Superior Court judge and "affiliation" with the judges of that court does not  
 5 demonstrate that the undersigned's impartiality might reasonably be questioned. Plaintiff  
 6 speculates, but does not offer any evidence, showing that the undersigned has a personal  
 7 bias or prejudice against him. Recusal is not warranted on the basis of an unsubstantiated  
 8 suspicion of personal bias or prejudice. See Clemens, 428 F.3d at 1180.

9       Third, Plaintiff's assertion of bias and prejudice based on the undersigned's  
 10 "financial interests" in the outcome of this action is not supported by specifically alleged  
 11 facts demonstrating that recusal is warranted. Plaintiff alleges that he cannot receive a fair  
 12 trial in this Court because CalPERS pays for the retirement and medical plans of all  
 13 California Superior Court judges (including the undersigned), and that CalPers is invested  
 14 in most of the "banks that are litigating and filing Unlawful Detainer complaints." See Pl's  
 15 Mtn. at 12. Plaintiff further alleges that "Judge's profit personally for every case that they  
 16 preside over in the form of a 10 to 15 percent payment [for] each case into the CALPERS  
 17 pension funds," and that "[a]ll Judges realize that each ruling or judgment against a  
 18 CALPERS investor bank is a direct hit against the amount of his or her future pension." Id.  
 19 According to Plaintiff, the undersigned is biased in favor of Defendants because the  
 20 undersigned benefits "by ruling in favor of Unlawful Detainer plaintiffs, banks and various  
 21 other financial institutions that are investors in CalPers." Pl.'s Aff. ¶ 19.

22       While the underlying actions that give rise to the instant action are unlawful detainer  
 23 actions, Plaintiff has not alleged any facts showing that the undersigned has a financial  
 24 interest that could be affected by the outcome of this action. Plaintiff alleges that CalPERS  
 25 pays for the retirement and medical plans of all California Superior Court Judges.  
 26 However, the undersigned is a United States District Judge, not a California Superior Court  
 27 Judge. There is no allegation or facts suggesting that CalPERS funds the retirement or  
 28 medical plans of United States District Judges.

1       Moreover, even assuming that the undersigned has a retirement or medical plan  
2 funded by CalPERS, Plaintiff has not shown that CalPERS is invested in any of the named  
3 Defendants in this case. Nor has Plaintiff alleged any specific facts demonstrating that the  
4 undersigned's impartiality might reasonably be questioned because of a financial interest in  
5 the outcome of this action. Plaintiff's speculative and unsubstantiated suspicion of personal  
6 bias and prejudice does not warrant recusal. See Clemens, 428 F.3d at 1180.

7       Finally, Plaintiff has not demonstrated that recusal is warranted on the ground that  
8 the undersigned's handling of the prior unlawful detainer action removed to this Court by  
9 Plaintiff "flagrantly violated Canons 1-3 of the Federal Code of Judicial Conduct."  
10 Plaintiff's conclusory allegations in this regard are insufficient to support a claim of bias or  
11 prejudice such that recusal is required. Plaintiff has failed to specifically explain how the  
12 undersigned's conduct violated any canon of judicial conduct or otherwise allege any  
13 specific facts to overcome the presumption that the undersigned is impartial. See First  
14 Interstate Bank of Arizona, N.A. v. Murphy, Weir & Butler, 210 F.3d 983, 988 (9th Cir.  
15 2000) (judges "are presumed to be impartial and to discharge their ethical duties faithfully  
16 so as to avoid the appearance of impropriety").

17       **3. Disqualification Under 28 U.S.C. § 455**

18       Section 455(a) provides that "[a]ny . . . judge of the United States shall disqualify  
19 himself in any proceeding in which his impartiality might reasonably be questioned." 28  
20 U.S.C. § 455(a). A judge "shall also disqualify himself . . . [w]here he has a personal bias  
21 or prejudice concerning a party . . . or knows that he . . . has a financial interest in the  
22 subject matter in controversy or in a party to the proceeding, or any other interest that could  
23 be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(a). Because  
24 the extrajudicial source factor applies to disqualifications under §§ 455(a) and 455(b)(1),  
25 see Liteky, 510 U.S. at 551-554, the undersigned finds no reason to disqualify herself as a  
26 result of bias or prejudice arising out of the Court's remand order in the unlawful detainer  
27 action Plaintiff removed to this Court, for the reasons discussed above. Further, for the  
28 reasons stated above addressing disqualification apart from the extrajudicial source factor,

1 the Court finds that Plaintiff has failed to articulate a sufficient basis for disqualification  
 2 under § 455. Plaintiff has not alleged specific facts showing that a reasonable person with  
 3 knowledge of all the facts would perceive a significant risk that the undersigned will  
 4 resolve the case on a basis other than the merits.

5 **B. Subject Matter Jurisdiction**

6 Federal courts have a duty to examine their jurisdiction *sua sponte* before  
 7 proceeding to the merits of a case. See S. Pac. Transp. Co. v. City of Los Angeles, 922  
 8 F.2d 498, 502 (9th Cir. 1990). "If the court determines at any time that it lacks subject-  
 9 matter jurisdiction, the court must dismiss the action." Fed.R.Civ.P. 12(h)(3).

10 "The Rooker-Feldman doctrine instructs that federal district courts are without  
 11 jurisdiction to hear direct appeals from the judgments of state courts." Cooper v. Ramos,  
 12 704 F.3d 772, 777 (9th Cir. 2012). The doctrine bars a district court from exercising  
 13 jurisdiction not only over an action explicitly styled as a direct appeal, but also over the "de  
 14 facto equivalent" of such an appeal. Noel v. Hall, 341 F.3d 1148, 1155 (9th Cir. 2003).  
 15 "A de facto appeal exists when 'a federal plaintiff asserts as a legal wrong an allegedly  
 16 erroneous decision by a state court, and seeks relief from a state court judgment based on  
 17 that decision.' " Bell v. City of Boise, 709 F.3d 890, 897 (9th Cir. 2013); see also  
 18 Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004) (the Rooker-Feldman  
 19 doctrine applies where a party is asserting as his injury legal error or errors by the state  
 20 court, and is seeking as his remedy relief from the state court judgment).

21 If a plaintiff brings "a forbidden de facto appeal," such that the Rooker-Feldman  
 22 doctrine applies, the doctrine not only prohibits the plaintiff from litigating the de facto  
 23 appeal, but also any issue that is "inextricably intertwined" with the state court's judgment.  
 24 Bell, 709 F.3d at 897. A claim is "inextricably intertwined" with a state court judgment "if  
 25 the federal claim succeeds only to the extent that the state court wrongly decided the issues  
 26 before it," i.e., "[w]here federal relief can only be predicated upon a conviction that the  
 27 state court was wrong." Cooper, 704 F.3d at 779; see also Bianchi v. Rylaarsdam, 334 F.3d  
 28 895, 898 (9th Cir. 2003) (providing that claims are " 'inextricably intertwined' with the state

1 court's decision" if "the adjudication of . . . [such] claims would undercut the state ruling").  
2 In analyzing the applicability of the Rooker-Feldman doctrine, the court "pay[s] close  
3 attention to the relief sought by the federal court plaintiff," as the doctrine precludes the  
4 adjudication of a claim that seeks an "undoing" of the prior state court judgment. Bianchi,  
5 334 F.3d at 900.

6 Here, the FAC alleges that Defendants filed "several identical Unlawful Detainer  
7 Claims [against Plaintiff] misapplying [state law]." FAC at 6. Although not entirely clear,  
8 Plaintiff appears to contend that Defendants lacked a legal basis for prosecuting the  
9 underlying unlawful detainer actions because he is a homeowner, not a tenant. As his  
10 remedy, Plaintiff requests that the Court make an affirmative determination that the  
11 Defendants wrongfully prosecuted the underlying unlawful detainer actions based on a  
12 misapplication of state law. Plaintiff also seeks the following relief: (1) an order vacating  
13 "all orders, judgments, rulings, writs, and determinations in all Unlawful Detainer  
14 complaints filed by Defendants . . . against [him] . . . pursuant to 1161(a) in the following  
15 Case Numbers: RG11602224 and RG11610380, with prejudice"; (2) a declaration that he is  
16 a homeowner, not a tenant; (3) an injunction preventing Defendants from prosecuting  
17 further unlawful detainer actions against the Property; and (4) an order "[n]otify[ing] the  
18 Alameda County Superior Court and the Alameda County Sheriff['s] Department to  
19 immediately dismiss Case Numbers RG11602224 and RG11610380 and Sheriff Writ  
20 Number 20120099649, with prejudice." Id. at 7.

21 The Court finds that the Rooker-Feldman doctrine applies and precludes the Court  
22 from exercising subject matter jurisdiction over the instant action. Plaintiff's declaratory  
23 relief claim is barred under the Rooker-Feldman doctrine because Plaintiff seeks relief from  
24 "all orders, judgments, rulings, writs, and determinations" issued in the underlying state  
25 court unlawful detainer actions. The decisions of the state court in those actions constitute  
26 the injury about which Plaintiff complains; he seeks to have this Court review and reject  
27 those decisions and to issue an order "notifying" the state court to dismiss the underlying  
28 unlawful detainer actions and the Sheriff's writ. Thus, to the extent Plaintiff seeks relief

1 from allegedly erroneous state court "orders, judgments, rulings, writs, and  
2 determinations," this action involves "a forbidden de facto appeal."

3 As for the other issues raised in the FAC, the Court finds that they are also barred by  
4 the Rooker-Feldman doctrine because they are "inextricably intertwined" with the state  
5 court judgments. The Court cannot grant the relief Plaintiff seeks without "undoing" the  
6 decisions of the state court. Indeed, if the Court were to find that the Defendants lacked a  
7 legal basis to prosecute the underlying unlawful detainer actions as Plaintiff contends, the  
8 Court would have to find that the state court wrongly decided the issues before it.

9 Accordingly, the Court concludes that it lacks subject matter jurisdiction to consider  
10 Plaintiff's declaratory relief claim. Therefore, this action is DISMISSED. Because  
11 granting leave to amend would be futile, dismissal is without leave to amend.

12 **III. CONCLUSION**

13 For the reasons stated above, IT IS HEREBY ORDERED THAT:

14 1. Plaintiff's motion to recuse or disqualify is DENIED.  
15 2. This action is DISMISSED without leave to amend for lack of subject matter  
16 jurisdiction.  
17 3. The Clerk shall close the file and terminate all pending matters.

18 IT IS SO ORDERED.

19 Dated: 6/20/13

  
20 SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 SABIR AL-MANSUR,

5 Plaintiff,

6 v.

7 BARRY GROSS et al,

8 Defendant.

9 \_\_\_\_\_ /  
10 Case Number: CV12-05535 SBA  
11  
12 **CERTIFICATE OF SERVICE**  
13  
14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
15 Court, Northern District of California.  
16 That on June 20, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
17 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
18 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
19 located in the Clerk's office.  
20  
21  
22 Sabir Al-Mansur  
23 2419 Market Street  
24 Oakland, CA 94607  
25  
26 Dated: June 20, 2013  
27  
28 Richard W. Wiekking, Clerk  
By: Lisa Clark, Deputy Clerk